

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ALREE SWEAT,

Petitioner,

vs.

No. CIV 19-0987 JB\GJF

,  
STATE OF NEW MEXICO,

Respondent.

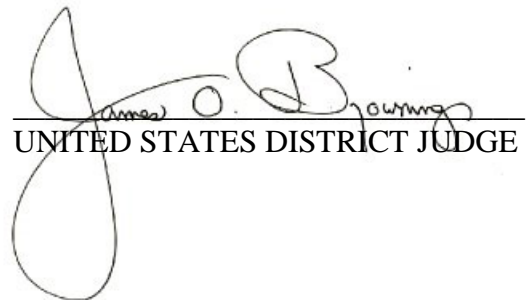
**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed October 21, 2019 (Doc. 2) ("Motion"). The Court has reviewed Petitioner Alree Sweat's Motion. The Court will deny the Motion and order Sweat to pay the full \$5.00 filing fee within thirty days of entry of this Order.

This is a habeas corpus proceeding under 28 U.S.C. § 2254. See Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus at 1, filed October 21, 2019 (Doc. 1). The filing fee for a § 2254 proceeding is \$5.00. Sweat did not pay the \$5.00 filing fee but, instead, filed his Motion seeking leave to proceed in forma pauperis. Although § 1915(b)(1) generally does not apply to habeas corpus cases, the Court may consider materials that Sweat submitted, including his inmate account, in deciding whether to grant leave to proceed in forma pauperis. See 28 U.S.C. §1915(a)(2) (prisoners seeking to bring a civil action or appeal must submit an inmate account statement); 28 U.S.C. § 1915(a). The Court has analyzed Sweat's inmate account submitted under § 1915(b)(1) and concludes that the deposits to Sweat's inmate account in the six months before he filed this action total \$873.60. See Motion at 3-5. The average monthly deposits to the account over the six-month period equal \$145.60. See Motion at 3-5. Twenty percent of the average

deposits is \$29.12, an amount that exceeds the \$5.00 filing fee for the commencement of Sweat's suit. Sweat's inmate account statement also discloses that, when he instituted this proceeding, his account balance was \$48.78. See Motion at 4. Sweat's inmate account statement demonstrates that he is able financially to prepay the \$5.00 fee for this action. See 28 U.S.C. § 1915(b)(3). The Court will therefore deny Sweat leave to proceed pursuant to § 1915 and will order him to pay the full \$5.00 filing fee within thirty days. If Sweat does not pay the \$5.00 filing fee within the thirty-day time period, the Court may dismiss this proceeding without further notice.

**IT IS ORDERED** that: (i) the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed October 21, 2019 (Doc. 2), is denied; and (ii) Petitioner Alree Sweat must pay the full \$5.00 filing fee within thirty days of this Order's entry.



UNITED STATES DISTRICT JUDGE

*Parties:*

Alree Sweat  
Las Cruces, New Mexico

*Petitioner pro se*